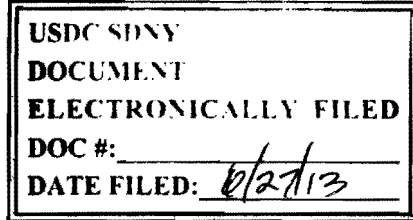


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
RICHARD N. QUINN,

Plaintiff,

-v-

LORRAINE LEVITAS and MARIA KARIMI, MD,

Defendants.  
-----X

10 Civ. 8692 (PAE) (JCF)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Before the Court is plaintiff Richard N. Quinn’s motion for reconsideration pursuant to Federal Rule of Civil Procedure 60. Dkt. 128. On January 9, 2013, the Court issued an Opinion and Order (“Opinion”) (Dkt. 121), which adopted, without objection from Quinn, the December 13, 2012 Report and Recommendation (“Report”) of the Honorable James C. Francis IV. On January 28, 2013, Quinn simultaneously filed a notice of appeal and a Rule 60 motion for reconsideration. For the reasons that follow, Quinn’s motion for reconsideration is denied. Accordingly, defendants’ summary judgment motion is granted.

**I. Discussion**

The Court assumes familiarity with the January 9 Opinion and the facts of this case.

Rule 60(b) provides that “[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding” because of “mistake, inadvertence, surprise, or excusable neglect,” or “any other reason that justifies relief” (among other reasons, not relevant here). Fed. R. Civ. P. 60(b).

In seeking reconsideration, Quinn contends that the Court failed to consider objections that he submitted in response to Judge Francis’s Report. Attached to one version of his motion,

*see* Dkt. 129, Quinn included an affidavit he purports to have sent “in opposition to” Judge Francis’s Report.

If Quinn had, in fact, submitted objections to the Court that went unconsidered in reviewing the Report, that would be a compelling reason for reconsideration under Rule 60(b)(6): Whether a party objects determines what standard of review to apply in reviewing a report and recommendation. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b).

The affidavit that Quinn attaches here, however, does not contain objections to the Report. Both the affidavit and the affirmation of service he attaches are dated November 20, 2012—nearly a month before the Report was issued. In fact, what Quinn attaches here is his *opposition* to the summary judgment motion. *See* Dkt. 119, Ex. A. This submission was considered by Judge Francis in his Report, and expressly referenced by the Court in its Opinion. *See* Opinion 2 (“Quinn opposed the motion, but did not file a responsive statement of undisputed facts as required under Local Civil Rule 56.1. Dkt. 119, Ex. A.”).

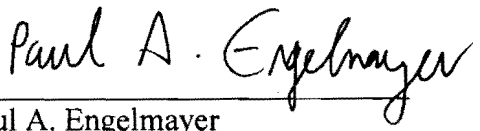
Quinn has also failed to allege that he met the standard for excusable neglect in failing to submit timely objections. *See Pollard v. Does*, 452 F. App’x 38, 40 (2d Cir. 2011), *cert. denied*, 132 S. Ct. 2399 (U.S. 2012). Nor, to this date, has the Court received any objections to the Report. Accordingly, no objections having been received, a review for clear error was appropriate.

As the Court previously explained in the Opinion, Quinn’s failure to object also operates as a waiver of appellate review. *See Caidor v. Onondaga Cnty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989)).

**CONCLUSION**

For the reasons stated herein, the Court denies Quinn's Rule 60 motion for reconsideration. The Clerk of Court is directed to terminate the case.

SO ORDERED.

  
Paul A. Engelmayer  
United States District Judge

Dated: June 26, 2013  
New York, New York